

**EXECUTIVE DECISION SESSION
28 APRIL 2020**

NEASHAM ROAD – COMPULSORY PURCHASE ORDER

**Responsible Cabinet Member
Councillor Alan Marshall – Economy Portfolio**

**Responsible Director – Ian Williams
Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to seek authority to make and pursue the confirmation of a Compulsory Purchase Order to facilitate the acquisition of land at Snipe Lane, Darlington under section 226(1)(a) of the Town and Country Planning Act 1990.
2. The acquisition of the land in question (the ‘Order Land’) is necessary to allow the Council to dedicate and adopt part of Snipe Lane as a public road, and to enhance other public rights of way, as part of the Scheme.

Summary

3. The use of powers for the compulsory purchase of land is sought in relation to a significant housing development being undertaken jointly by the Council and ‘Homes by Esh’. The proposed development is referred to in this report as the “Scheme”.
4. This Scheme will bring economic, social and environmental benefits to the Borough.
5. The Scheme delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
6. The Council has freehold title to virtually all of the land required for the Scheme. The parcels of land within the Council’s ownership are shown in the plan at **Appendix 1**.

7. However, it can be seen from the plan that although the Council has private rights of way along Snipe Lane, the Council is not able to prove title to the land within the boundaries of Snipe Lane, one of the main accesses to the Scheme.
8. Unfortunately, the ownership of Snipe Lane is unknown, and in spite of enquiries and searches, and planning consultation with regard to the planning application for the Scheme, the Council has been unable to discover any owner of the land in question.
9. The Scheme promises significant improvements to Snipe Lane itself, but these improvements and the Scheme as a whole, cannot be realised without clear and definitive rights over Snipe Lane, such as would allow dedication to public use and adoption of the access to be constructed along Snipe Lane.
10. It should note that the compulsory purchase legislation makes provision for the acquisition of land even where there is no known owner, and that this procedure is capable of vesting a good freehold title in the acquiring authority (the Council).
11. Details of the land proposed to be acquired compulsorily (Order Land) is shown shaded pink on the Plan attached at **Appendix 2**.
12. Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement *on or in relation to the land*. The Council must not use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:
 - (a) the promotion or improvement of the economic well-being of the Council's area;
 - (b) the promotion or improvement of the social well-being of the Council's area; and
 - (c) the promotion or improvement of the environmental well-being of the Council's area.
13. Given that the overriding purpose of acquisition of land within Snipe Lane is facilitation of the Scheme for the development of land which will bring significant improvements to the social and economic well-being to the Borough, and some environmental benefits, the section 226(1)(a) power is considered appropriate.
14. The officer view is as follows.
15. Delivery of new roads and footpaths is central to the delivery of the Scheme as a whole, which will deliver the full range of social and environmental benefits as outlined above and considered in the Planning Statement.
16. The need for the Scheme and, in delivering the Scheme, the necessity of acquiring the Order Land is demonstrated.

17. Officers consider that there is a reasonable prospect that all phases of the Scheme to which the Order Land relates will be delivered and that as negotiations to acquire the Order Land are either impossible or unlikely to materialise, there are no likely realistic alternatives to the compulsory acquisition of the Order Land to achieve the purposes of the proposed by that acquisition.
18. Virtually all of the land required for the Scheme is already in Council ownership. In effect the value of this land is already committed to the Scheme. The costs of construction, including the construction of roads and footpaths to adoptable standards on the Order Land and elsewhere on the Scheme land, are secured under a joint venture between the Council and Homes by Esh.
19. To the extent that the Order would affect individual rights, the officer view is that interference with those rights is prescribed by law (S.226(1) (a) of the Town and Country Planning Act 1990); is pursuant to a legitimate aim; is necessary in a democratic society and is proportional to the proposed outcome.
20. In the officers' view, there is therefore a compelling case in the public interest sufficient to justify the making of the Order for the acquisition of land closely related to, and part of, the Scheme.

Recommendations

21. It is recommended that the Leader:
 - (a) Agree to the use of compulsory purchase powers for the purpose of the acquisition of the Order Land under the provisions of the Town and Country Planning Act 1990, section 226(1)(a) for the reasons and purposes set out in this report; and
 - (b) That in respect of the Order Land the Director of Economic Growth and Neighbourhood Services be authorised to:
 - (c) Take all necessary steps to secure the making, confirmation (where permitted) and implementation of the Compulsory Purchase Order, including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry;
 - (d) Take all necessary steps to negotiate and approve agreements with land owners and owners of affected interests setting out the terms for the withdrawal of objections to the compulsory purchase order, including where appropriate, seeking exclusion of land from the compulsory purchase order;
 - (e) Take all necessary steps to bring into operation the Compulsory Order if confirmed, including all further steps required to acquire land interests including but not limited to the making of any required general vesting declaration and the payment of appropriate compensation.
 - (f) Make such amendments and additions to the draft Statement of Reasons as the Director deems necessary to properly reflect the Council's reasoning

regarding the proposed CPO so as to properly present the Council's case at any inquiry;

- (g) Take all necessary steps to negotiate the acquisition of any qualifying interest in the Order Land in advance of making the compulsory purchase order.

Reasons

22. The recommendations are supported by the following reasons: -

- (a) To facilitate a Scheme for the development of Council-owned land off Neasham Road for housing, including much needed affordable housing.
- (b) To enable the adoption of part of Snipe Lane, including enhanced footpath and cycleway provision, as part of that Scheme.
- (c) The Scheme has a realistic chance of early delivery, and once delivered will provide significant social and economic benefits to the Borough and will support the Council's planning targets for the provision of housing, including affordable housing.
- (d) Implementation of the Scheme and realising the benefits of the Scheme are dependent on acquiring the Order Land. The Council has no other way of acquiring good title to the land required in a reasonable timeframe.
- (e) Alternative options to the scheme have been considered and are explained above. For the reasons set out in the Full Report, Officers consider that there is no alternative to compulsory acquisition and no impediment to the developing the Scheme, including the Order Land.

Ian Williams
Director of Economic Growth and Neighbourhood Services

Background Papers

National Planning Policy Framework, DCHLG 2018
Guidance on Compulsory Purchase and the Criche Down Rules, DCHLG 2018
Darlington Core Strategy DPD
Darlington Housing and Employment Land Availability Assessment, 2018

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S17 Crime and Disorder	There is no direct impact on crime and disorder considerations.
Health and Well Being	No impact
Carbon Impact and Climate Change	There is no direct impact on carbon reduction arising from the issues in this report.
Diversity	There are no issues relating to Diversity which this report needs to address
Wards Affected	Eastbourne and Hurworth
Groups Affected	The impact of the report on any Group is minimal
Budget and Policy Framework	There is no change proposed to the budget and policy framework
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	This report supports the Perfectly Placed priority, through the Aspiring and Prosperous Themes, in facilitating the redevelopment of Neasham Road in Darlington
Efficiency	No impact
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Description of the Scheme

23. A general plan of the proposed layout of the Scheme is attached to this report at **Appendix 3**. The Scheme is described in detail in the attached Planning Statement **Appendix 4**.
24. The Scheme which the compulsory land acquisition is intended to facilitate provides for the construction of 449 new dwellings on land owned by the Council. The planning application for the Scheme is a hybrid application, part in detail and part in outline. 305 of the 449 new dwellings will be affordable dwellings, with approximately 150 affordable dwellings available for rent built first, followed by a further 144 affordable dwellings built as and when a registered provider of social housing is appointed and the reserved matters application for this element is approved. Open market dwellings will be built in accordance with progress of plot sales and demand.
25. The Scheme comprises a minimum of 65% affordable dwellings. Of the 294 affordable units, 150 dwellings (on Cell B) would be brought forward first by the Council, and a further 144 dwellings on (Cell C) by a Registered Provider of social housing.
26. The Scheme will also consist of a diverse mixture of 2, 3 and 4 bedroom open market properties (on Cell A) using a mix of house types and configurations from 'Homes by Esh'. This is considered an appropriate mix for families, young

professionals and older people and is provided in an inherently sustainable location close to Darlington town centre and key public transport links.

27. Homes by Esh are a wholly owned subsidiary and the house building division of the Esh Group. Having launched in 2013 and with previous experience under the Esh banner they have a proven track record of house building in the north of England, employing over 1,200 people and with a turnover of £220M in 2017. Homes by Esh are the Council's Joint Venture partner under an over-arching agreement for residential development of sites in both Council and private ownership. They have recently completed a development on land adjoining the Council's Eastbourne sports complex and are currently starting to develop Stag House Farm.
28. It is proposed that 'Homes by Esh' will be the principle contractors and they will construct all the adoptable civil, drainage, and road infrastructure requirements to service cells A, B and C enabling the Scheme to come forward as one development. This initial construction element is the catalyst for the provision of all of the affordable housing within the application Scheme. Estimated costs for the infrastructure have been received and actual costs are currently being determined. It is proposed to enter into a conditional sale of Cell A to Homes By Esh with obligations for them to construct the infrastructure but terms for this and the business case for the scheme will be subject to approval by Cabinet in a report to be submitted to Cabinet in the Spring.
29. As part of the initial infrastructure works both site entrances will be connected by the development loop road. This will be used for the new bus route servicing the proposed development. 'Homes by Esh' will be undertaking the loop road infrastructure together with both the North and South entrance junctions, allowing both developers to commit to building their proposed schemes at the same time.
30. An application for planning approval for the Scheme has been submitted to the Council by Homes by Esh on behalf of Homes by Esh and the Council jointly.

The Scheme: Planning Policy Considerations

31. The Scheme has been progressed in consultation with Council planning officers and is considered to be compliant with national policy contained in the National Planning Policy Framework (NPPF): see paragraphs 5.1-5.29 of the Planning Statement.
32. With regard to Local Planning Policy, the Darlington Housing and Employment Land Availability Assessment (HELAA) was completed in March 2018, and the proposed development site falls within site reference 243 of that Assessment. The proposed development site therefore falls within land suitable for housing.
33. The Darlington Local Plan (draft 2016, consultation closed 2018) is still emerging.

34. The Development Plan for the area within which the application is located currently consists of the following core strategies:
 - (a) Core Strategy Policy CS2: Achieving High Quality, Sustainable Design.
 - (b) Core Strategy Policy SC10: New Housing Development.
 - (c) Core Strategy Policy CS11: Meeting Housing Needs.
 - (d) Core Strategy Policy CS15: Protecting & Enhancing Biodiversity & Geodiversity.
 - (e) Policy CS19: Improving Transport Infrastructure and Creating a Sustainable Transport Network.
35. The Scheme is designed to be in accordance with all of the policies above, and as such would be 'in accordance with the development plan', and unless other material considerations indicate to the contrary planning permission should be granted.
36. The planning summary in the Planning Statement notes the following points.
37. The layout affords an overall development that is socially inclusive, well connected and provides and promotes cohesion with the neighbouring South Darlington suburbs.
38. The application site is located on the edge of a well-established residential area and is located within 1km of Darlington Town Centre and other local facilities. The site is also accessible by both private and public transport with a new bus route being introduced into the Scheme.
39. This Scheme will bring economic, social and environmental benefits and the proposals represent sustainable development and should benefit from the presumption in favour of sustainable development.
40. The delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
41. The Scheme will be a positive contribution to the creation of a mixed and balanced community, as well as meeting identified housing needs within the local community of Darlington. The proposal will also contribute towards Darlington Borough Council meeting their housing land supply, and would assist Darlington with providing sustainable, high quality family accommodation to meet such needs in the Council's area.
42. The Scheme will make a positive contribution towards the quality of the built environment of the area through the careful design and layout of the proposed dwellings and amenity space.

43. The Scheme's landscaping proposal would also deliver a high-quality setting which corresponds with the requirements set out in Policy CS15 and NPPF part 16. This involves:
- (a) Retention of existing hedgerows and mature trees along the watercourse and access roads to create green corridors linking the housing blocks, public open space and wider site landscape;
 - (b) Creation of a connected network of green spaces that build on and enhance the existing green corridors;
 - (c) Creation of landscape buffer zone along the southern and eastern boundaries of the site to screen the A66 and Neasham Road from the proposed development and assist with noise attenuation; and
 - (d) Creation of an extensive Footpath / Cycleway network within the site that links to the existing network and beyond (see paragraphs 6.24 – 6.27 of the Planning Statement).

The Scheme: Land Owned By The Council

44. The Council has freehold title to virtually all of the land required for the Scheme. The parcels of land within the Council's ownership are shown in the plan at Appendix 1.
45. However, it can be seen from the plan that the Council is not able to prove title to the land within the boundaries of Snipe Lane, or the lane/track running northwards from Snipe Lane (at its western end), or the full width of Snipe Lane where it meets the adopted highway at Neasham Road (all land shaded green on the plan at Appendix 1).
46. Unfortunately, the ownership of Snipe Lane is unknown, and in spite of enquiries and searches, and planning consultation with regard to the planning application for the Scheme, the Council has been unable to discover any owner of the land comprising Snipe Lane.
47. Snipe Lane is a route that has been marked on maps for nearly two centuries, but is of uncertain status. It is possible that there is no known or traceable owner.
48. In effect, there is no party with whom the Council is able to negotiate with a view to securing title to the land.

Roads, Footpaths and Access for the Scheme

49. For clarity in relation to highways and public rights of way matters, Members are referred to the more detailed depiction of the public rights of way shown on the layout map at **Appendix 5**, and in particular it should be noted on the layout map the respective locations of:

- (a) Snipe Lane.
- (b) Footpath 17.
- (c) Footpath 14.
- (d) Proposed new lengths and width of footpaths/cycleways.
- (e) Proposed new estate and access roads.

(Additional information on the proposed new roads and transport can be seen on the general layout plan at Appendix 3.)

50. The Scheme promises significant improvements to Snipe Lane itself, and footpaths, but these improvements and the Scheme as a whole, cannot be realised without clear and definitive rights over Snipe Lane such as would allow dedication to public use and adoption of the access to be constructed along Snipe Lane.

The Need for Compulsory Acquisition of Land

51. Officers have investigated the legal status of Snipe Lane, including taking Counsel's advice on the interpretation of the information available to them.
52. Snipe Lane is a public right of way on foot and is recorded on the definitive map as such. The width of the right of way on foot is not recorded in the Council's records, but from evidence on historic maps and on the ground is likely to extend to the full width of the lane, at least in parts. It is a moot point whether the footpath is 'adopted' as publicly maintainable by the Council, but on balance it is likely that statutory and other presumptions apply to make it so. However, footpath rights are of course very different from other, 'higher' rights.
53. Snipe Lane is not recorded as a right of way on horse, or for vehicles, by the Council. Historic maps refer to the part of Snipe Lane both to the east and west of the old railway line, as 'Bridle Way', but although clearly of sufficient width to be used by horses, it is unclear whether such a right over the lane was ever more than a private right of way. A similar interpretation applies to the right to use vehicles, including motor vehicles.
54. In relation to rights for vehicles Snipe Lane is not adopted as publicly maintainable by the Council.
55. Neighbouring landowners, including the Council, therefore seem to have private rights on foot and by all modes of transport, to use Snipe Lane for access to their property. The fact remains however that these private rights are not sufficient to permit dedication to public use by the Council of the relevant parts of Snipe Lane. Only the freeholder is able to make such a dedication under highways law, and the Council cannot demonstrate freehold title to the land under Snipe Lane.
56. The Council does have freehold title to the land either side of the relevant parts of Snipe Lane (see the map at Appendix 1) and this ownership gives rise to a presumption that the Council owns the land under the lane. However, this presumption is a rebuttable one: if another person or body can show a freehold

title over any part, the Council's claim would be seriously undermined. This is not an adequate basis on which to implement a development as significant as the Scheme.

57. If the land cannot be dedicated to public use then it is difficult to adopt, and adoption is considered necessary by officers to provide the benefits of the Scheme (the development proposal).
58. The Highways Act 1980 (section 228) contains a potential alternative method of adoption. The alternative involves the construction of works over the relevant parts of Snipe Lane by a person (a non-public body) other than the Council, and then for the Council to treat the constructed road as a 'private street' and serve notice on the frontagers (i.e. adjacent landowners) that the 'private street' is to be adopted. Landowners can object, but if there is no objection, or objections are overruled by the Magistrates Court, the street can be adopted. However, Counsel has advised that Snipe Lane cannot be considered a 'private street' given the public right of way on foot that runs across it, and the section 228 procedure is therefore unavailable.
59. The benefits of acquisition of land in Snipe Lane are that a clear title can be secured that allows full dedication of the rights required for the roads, paths and other access to the Scheme; such rights would not be to the exclusion of any existing private rights and would permit new public rights of way, a cycleway, road, and related planting, surface and safety enhancements (see the plan at Appendix 5). The land in question is already contiguous with Council ownership, and the land in question is not currently known to vest in any person.
60. Substantial efforts have been made by officers to identify owners of the proposed Order Land but have not been successful to-date. The land is considered therefore to be without an owner. Adjacent landowners other than the Council claim *private* rights over the lane (including with vehicles), but there is no evidence of title. Further efforts to identify any owner of the freehold to the land under the lane will continue to be made, both before and after the making of any compulsory purchase order.
61. It should be noted that the compulsory purchase legislation makes provision for the acquisition of land even where there is no known owner, and that this procedure is capable of vesting a good freehold title in the acquiring authority (the Council). The compulsory purchase procedure is summarised below.

The Proposed Order Land

62. Details of the land proposed to be acquired compulsorily (Order Land) is shown shaded pink on the Plan attached at Appendix 2. More detail will be set-out in the Statement of Reasons for making an Order, a draft of which is attached at **Appendix 6**.
63. Note that the Order Land consists of three parcels of land, identified as distinct numbered plots 1, 2 and 3. Distinct numbering of plots is adopted as any

freehold owners discovered during the process might be different people, and because the rights over/use of each plot appears to differ from the others.

64. Appendix 2 also contains a written description of each plot of the Order Land, in a form similar to that required in the Order itself.

Statutory Powers

65. Section 226(1)(a) of the Town and Country Planning Act 1990 ('TCPA') empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement *on or in relation to the land*. The Council must not use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

- (a) the promotion or improvement of the economic well-being of the Council's area;
- (b) the promotion or improvement of the social well-being of the Council's area; and
- (c) the promotion or improvement of the environmental well-being of the Council's area.

66. Section 227 of the TCPA provides an equivalent power for the Council to acquire land (including rights over land) by agreement (as opposed to compulsorily) for the planning purposes described above.

67. Given that the overriding purpose of acquisition of land within Snipe Lane is facilitation of the Scheme for the development of land which will bring significant improvements to the social and economic well-being to the Borough, and some environmental benefits, the section 226(1)(a) power is considered appropriate.

The Compulsory Purchase Procedure

68. If authority to the making of the Order is given, the main steps taken will include :

- (a) Making of the Compulsory Purchase Order.
- (b) Notification to interested parties and publicity that the Order has been made, and that the Council intends to submit the Order for confirmation to the Secretary of State.
- (c) Submission of the Order to the Secretary of State.
- (d) Objections (if any) are made to the Secretary of State.
- (e) If valid objections are not withdrawn, a local inquiry is held by a suitably qualified inspector from the Planning Inspectorate.

- (f) The Inspector reports to the Secretary of State.
 - (g) Secretary of State's decision.
 - (h) Notification and publicity for the Secretary of State's decision.
 - (i) Six weeks High Court challenge period.
 - (j) If the Order is confirmed, the Council proceeds to acquire the Order Land, and pays appropriate compensation to affected parties (assessed according to a well-established compensation code).
69. An estimated timetable for bringing a compulsory order into effect can be seen at **Appendix 7**.
70. Reasonable efforts to acquire land and rights by agreement would continue throughout the Order process.
71. The Order will include a schedule listing all owners, lessees, occupiers and others who are likely to have a claim for compensation. These parties are known as "qualifying persons" and it is these persons who must be served with notices and who may make representations/objections to the Secretary of State within a specified period after the Order is made.
72. Objections cannot be made on the basis that compensation is disputed or insufficient. Valid (but not necessarily persuasive) objections usually include assertions that compulsory powers are not necessary, or that the development which they are required to facilitate is not viable. If Objections to the Order are not withdrawn (and the parties do not agree to a written representation procedure), the Secretary of State is likely to arrange for a public local inquiry to be held and the Council and all objectors will be notified.
73. The inspector who holds the inquiry will report to the Secretary of State who will decide whether the Order should be confirmed without modification, modified, or rejected. If the Order is confirmed or modified the Council must publish notice of confirmation/modification and give individual notices to all qualifying persons with a copy of the Order. The date on which notice of confirmation is first published is the date from which the 6 weeks statutory High Court challenge period runs, and a three-year period within which the powers to acquire land under the Order must be "exercised".
74. The procedures provide for the acquisition of land where the owner is known or unknown. It is likely that if a compulsory purchase order is confirmed, the Order Land will be acquired by the Council, as acquiring authority, making a General Vesting Declaration. This is a procedure that allows title to be acquired without the completion of documentation other than by the Council.
75. So far as possible, claims for compensation will be settled by agreement. Rights to compensation include not only the value of land taken, but diminution in value

of land adversely affected but not acquired, and possible claims in respect of disturbance.

76. Compulsory purchase proposals may lead to a period of uncertainty for owners and occupiers. If Cabinet resolves to authorise the Order, the Council must therefore proceed with the statutory processes in a timely manner. Steps have therefore been taken by officers to ensure that in the event that Members resolve to make an Order, the statutory procedures can commence as soon as possible.

No Obstacles to Delivery of the Scheme

77. The Secretary of State *does not* require that before confirming a Compulsory Purchase Order the Scheme to which the Order relates must already have planning permission.
78. However, the Secretary of State will need to be satisfied that there is no policy or other in-principle impediment to the granting of planning permission. The planning position above is discussed so that Members have the information before them as to absence of such in-principle impediments, as well as the planning benefits of the Scheme.
79. The Scheme does not include any listed building, scheduled monument, or conservation area, and neither the Scheme land (the land already owned by the Council) nor the Order Land is subject to any special considerations.
80. In particular, the Order Land and the Scheme land does not include any common, village green, land subject to inalienable interests of the National Trust, nor does it comprise any operational land owned by a statutory undertaker.
81. All land interests which are to be acquired by the Council, whether compulsorily or by agreement will be acquired for planning purposes (under section 226 or 227 of the Town and Country Planning Act 1990). As all of the Order Land is intended to be used for adopted roads, public rights of way enhancements and related infrastructure, no onward disposals of the Order Land are contemplated after acquisition by the Council other than to the Joint Venture for the purpose of the scheme.
82. Subject to securing planning permission and control of the land necessary to deliver the Scheme, construction is expected to start on site in early 2021. As indicated above, construction would begin with infrastructure works, and the roads network in particular.
83. The Scheme will be fully funded by the Council and 'Homes by Esh' in accordance with binding agreements already made between the two, no external funding needs to be secured to deliver the Scheme although Homes England funding has already been committed to the scheme.

84. The costs of compulsory purchase, including the compulsory purchase order procedures and compensation payable to owners of any land interests will be met by the Council from its own resources. Given the nature of the interests to be acquired the cost of the compensation element is expected to be low or negligible.

Overall Justification Whether There is a Compelling Case in the Public Interest for the Order

85. Relevant considerations for Members in reaching their decision are set out throughout this report, but this section considers specifically the policy on compulsory purchase as set out in the DCHLG Guidance.

86. DCHLG guidance (paragraph 2) states as follows.

“Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- (a) plan a compulsory purchase timetable as a contingency measure; and*
- (b) initiate formal procedures”.*

87. The guidance goes on to say that, as an overarching consideration:

“A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”

88. In the context of the overarching consideration, the following issues should be considered in this case.

- (a) Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
- (b) The extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area;
- (c) The potential financial viability of the Scheme, general funding intentions and the timing of available funding;
- (d) Any impediments to implementation and whether the Scheme has a reasonable prospect of going ahead;
- (e) Whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means.

89. The officer view on these matters is as follows.

90. The Scheme meets the Council's planning objectives and provides significant housing benefits, thereby contributing significantly to the improvement of the economic and social well-being of the area.

91. Delivery of new roads and footpaths is central to the delivery of the Scheme as a whole, which will deliver the full range of social and environmental benefits as outlined above and considered in the Planning Statement.

92. The need for the Scheme and, in delivering the Scheme, the necessity of acquiring the Order Land is demonstrated above, and in the draft Statement of Reasons.

93. There is a reasonable prospect that all phases of the Scheme to which the Order Land relates will be delivered and that as negotiations to acquire the Order Land are either impossible or unlikely to materialise, there are no likely realistic alternatives to the compulsory acquisition of the Order Land to achieve the purposes of the proposed by that acquisition.

94. Virtually all of the land required for the Scheme is already in Council ownership. In effect the value of this land is already committed to the Scheme. The costs of construction, including the construction of roads and footpaths to adoptable standards on the Order Land and elsewhere on the Scheme land, are secured under a joint venture between the Council and Homes by Esh.

95. The Council will meet all costs of the compulsory purchase process, as outlined in this report.

96. There are no special restrictions affecting the Scheme land, or the Order Land.

97. The impact on the human rights of those likely to be affected by the proposed Order is considered below.

98. The impact of the Scheme in the context of the Equalities Act 2010 is considered below.
99. The considerable public benefits to be derived from implementation of the Scheme outweigh any possible harm caused by interference with the human rights of those likely to be affected by the compulsory purchase.
100. In the officers' view, there is therefore a compelling case in the public interest sufficient to justify the making of the Order for the acquisition of land closely related to, and part, of the Scheme.

Human Rights

101. In reaching their decision, Members should take account of the provisions of the European Convention on Human Rights and the Human Rights Act 1998. As a public authority, the Council must not act in a way which is incompatible with a Convention right or the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention.
102. As outlined above, in officers' view there are strong grounds on which to conclude that the proposed Scheme as a whole is in the public interest. Officers are also of the view that there is no unlawful derogation from or unlawful interference with the relevant human rights protected by the Convention, namely rights under Article 1 to the First Protocol, Article 6 and Article 8.

Article 1 to the First Protocol

103. Paragraph 12 of the DCLG Guidance draws particular attention to the provisions of Article 1 of the First Protocol to the Convention.
104. The main provisions of Article 1 in the current context are that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest"
105. Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority. Officers are of the view that compulsory acquisition is necessary given the dearth of alternatives to securing title to the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.

106. Any owners who are later identified during the making of the Order and its publication will be entitled to object to the Secretary of State before a decision is made on whether or not the Order should be confirmed. Owners and persons directly affected by the Order will also be entitled to full compensation for any property acquired by the compulsory purchase process, and/or for other losses.
107. Legal advice to Members is that there will be no violation of rights under Article 1 to the First Protocol in this instance, as the steps to be taken are in the lawful, in the public interest, and proportionate. (Proportionality is further considered at the end of this section).

Article 6 of the Convention

108. Article 6 provides that "In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".
109. The statutory procedures require that all those likely to be affected by the Order are notified and given an opportunity to object. If there are objections the Secretary of State will arrange a public local inquiry so that their objections can be heard (unless all parties agree to the written representations procedure). The legislation provides for statutory review in the event of challenge to the decision of the Secretary of State on confirmation of the Order. Finally, if the Order is confirmed and becomes operative those persons directly affected by the Order may refer disputes over compensation for hearing at the Lands Chamber of the Upper Tribunal.
110. Legal advice to the Counsel is that these procedures satisfy the requirements of Article 6.

Article 8 of the Convention

111. Where a compulsory order is made for the acquisition of property, the property in question may be a person's home. In such circumstances Article 8 of the Convention will be engaged.
112. Although the Order Land does not include any buildings, it is possible that the Order land supports private rights of access to property. In such circumstances Article 8 could be engaged if the rights of access are subject to interference (although there are no plans to interfere with such rights, other than to improve the surface over which the rights subsist).
113. Article 8 of the Convention provides that:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

"(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a

democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".

114. Article 8(1) is a qualified right. Interference with the rights afforded by Article 8(1) can be justified under Article 8(2) in appropriate cases.
115. Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority. Officers are of the view that compulsory acquisition is necessary given the dearth of alternatives to securing title to the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.
116. In the particular circumstances of this case, therefore, officers are of the view that the compulsory acquisition of the Order Land will not conflict with the rights provided by Article 8(1) of the Convention, as the qualifications in Article 8(2) apply.

Proportionality and Human Rights Summary

117. In deciding whether to proceed with the recommendations in this report, Members should consider the extent to which the decision may impact upon the human rights of any landowners affected, or those with any other interest, e.g. an easement, that may be affected, and to balance the effects of the proposed compulsory order against the overall benefits of the Scheme to the wider community. Members should be satisfied that the procedure does not derogate from the rights contained in Article 6, and that any interference with the rights under Article 8 and Article 1 Protocol 1 is justified.
118. Members may wish to bear in mind the following when considering the tests set out in the paragraphs above:
 - (a) That no more land than is required to facilitate the Scheme has been included in the Order.
 - (b) That no person is currently known to own the Order Land or any part of it, and that there is therefore no viable alternative to obtaining title to the Order Land other than by way of compulsory acquisition.
 - (c) That acquisition of title to the Order Land is necessary to facilitate the Scheme, as other legal procedures would not provide clear and secure methods of adoption of the required parts of Snipe Lane.
 - (d) That the Order would be made under a statutory procedure with built-in safeguards that protect the rights of landowners and other persons.

- (e) That the Order is sought to allow the Order Land to be developed to facilitate a large-scale Scheme which is in the interests of the social and economic well-being of the area, as much needed homes (including a large number of affordable homes) will be delivered.
- (f) All of those persons whose rights under Article 8 of the Convention and under Article 1 of the First Protocol of the Convention would be affected by the Order will have an opportunity to object to the Order and to have their objection considered at a fair and public hearing, in accordance with their rights under Article 6 of the Convention.
- (g) Landowners and other persons with a proprietary interest in the Order Land will be entitled to proportionate compensation.
- (h) That officers' advice in this report is that the necessary resources are in place to achieve delivery of the Scheme within a reasonable timescale.
- (i) That legal advice is that the making of the proposed Order would not infringe the European Convention or Human Rights Act 1998. To the extent that the Order would affect individual rights, the interference with those rights is prescribed by law (S.226(1) (a) of the Town and Country Planning Act 1990); is pursuant to a legitimate aim; is necessary in a democratic society and is proportional to the proposed outcome.

Equalities Impact

119. The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Section 149 of the Equality Act 2010 places the Council, as a public authority, under a legal duty ("the public sector equality duty"), in the exercise of all its functions, to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
 - (b) advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
120. Section 149 of the Equality Act 2010 and its predecessor provisions have been considered by the courts on a number of occasions. The principles derived from these cases include:
- (a) "due regard" requires more than simply giving consideration to the above factors, councillors should be aware of the special duties the Council owes to those with protected characteristics;

- (b) "due regard" is the regard that is appropriate in all the particular circumstances including, on the one hand, the importance of the areas of life of the members of the protected group that are affected and the extent of the effects; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing;
- (c) no duty is imposed to take specific steps, it is a duty to have regard to the need to achieve the various goals referred to above;
- (d) the duty must be fulfilled before and at the time that a particular policy which might affect protected groups is being considered. It involves a conscious approach and state of mind. It must be exercised in substance, with rigour and with an open mind. It is not a question of ticking boxes;
- (e) the duty must be discharged by the public authority, it cannot be delegated; it is a continuing duty; and
- (f) it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they have considered the public sector equality duty.

121. Officers have reviewed the proposed Order and Scheme. The Order Land, if acquired, will facilitate safer and easier access to Snipe Lane for all persons both compared to the current access, and for a range of users, on foot, of whatever ability, and/or with bicycles, horse, motor or other vehicles. Once delivered, the Scheme will facilitate accessibility to the public transport network for those people without access to cars, or who are mobility impaired. Officers advise that the Scheme will have a positive impact in terms of the Council's equalities obligations, and no adverse equalities impacts are foreseen.

Financial Risk of Compulsory Purchase

122. If the Order is confirmed, the Council would meet all costs of procedures and compensation associated with the Order from existing resources within the Economic Growth group. Specific costs would be expected in relation to making and publicising the Order, dealing with objections, possible local inquiry, bringing the order into operation, acquiring the land, payment of compensation, land registry and court fees and internal staff and consultants' costs.

123. If objections to the Order are upheld the Council has to meet the costs (typically legal and/or surveyor's costs) of the person who made the objection. (There is no need for the objector to have behaved unreasonably for costs to be awarded.) Conversely, if the objection is not upheld the objector will have to meet their own costs. Such costs are difficult to estimate before the objection is known, but if the objection is heard at inquiry and is upheld, the costs are likely to be in the order of several thousand pounds.

124. In contrast to a planning inquiry, the Council must also meet the costs of the inspector appointed by the Secretary of State. If there is an inquiry in this case, it is likely to be a short one of 1-2 days (although again before objections, if any, are known, estimates are inherently difficult to make).
125. There is therefore an inherent risk that if after an inquiry the Secretary of State refuses to confirm the Order, the Council may have incurred costs of up to about £20,000, and not be able to achieve the acquisition of the Order Land compulsorily. However, on the evidence currently available, the probability of such a risk materialising is considered by officers to be low.
126. Compensation will be payable to landowners only if the Order is brought into effect by the Council (or if a landowner can successfully argue that the making of the Order has rendered his/her land affected by statutory blight and is thereby diminished in value).